

February 11, 2019



Honorable Members of the Board of Supervisors,

My name is Allyson Finchum, and I reside at 15381 Beaver Den Lane, Beaverdam, Virginia in the Beaverdam District of Hanover County. I live directly across the North Anna River from 21560 Anderson Mill, with my house situated about 600' from the partially (not fully as stated) enclosed venue. On a number of occasions over the years, the Vickstrom's have hosted events at their home, which involved amplified outdoor music that I could hear inside my house. I did not complain, but it was annoying and inconsiderate in the least.

The applicants stated in their original letter that they have hosted a number of parties at their house and freely invite people to share the river. Based upon discussions with Mike Mastropaolo, who's property abuts the Vickstroms, it appears a number of those parties were on his property along the water, in complete disregard of written notification by Mr. Mastropaolo that access was limited to immediate family. Whether admitted or not, the river is and will be an attraction and for abutting property owners, it raises liability concerns that dismissive comments aside, must be considered, if not by the applicant then by the Board of Supervisors.

It is with this as a background that I am opposed to this Special Exception Permit. In fact, based on the original application, various changes and supplemental letters, the request and recommended conditions are confusing and seem to be at odds. Just what exactly is being requested and what is being approved? The conditions seem much more expansive than the referenced business plan would indicate, though I was unaware that a business plan had been submitted to the County. I will certainly follow up with your staff and review that document.

For the record, I am not a NIMBY (Not in My Back Yard). I have a Masters in Urban and Regional Planning and thirty years of planning and code administration experience. There are deficiencies/discrepancies in the application material provided for your consideration and the material itself is misleading. The application states that the venue is approximately 2 of 5.4 acres. A general schematic is provided, but no clear delineation or scaled boundaries or setbacks are identified.

For example, the area between Anderson Mill Road and the 60' White Pines is actually a separate parcel of land owned by the Virginia Department of Transportation and not part of the applicant's property. This creates a property line which has a required yard (setback). At this scale, it is difficult to determine whether the parking meets the yard requirements. The venue area also extends into setbacks adjacent to the Mastropaolo property.

A Resource Protection Area is identified on the County GIS but not identified on the plan, which may affect some uses within the venue.

The school bus turnaround is actually on VDOT property.

As the Board is fully aware, Article XVII, Section 13 of the Caroline County Zoning Ordinance, sets forth the County's Special Exception process. Subparagraph B (Purpose and Intent) states:

*"There are **certain uses** which, due to the **nature of the use**, can have an **undue impact** upon or **be incompatible with other land uses** within a zoning district or within an area of the County. These uses **may be allowed** to locate within certain designated districts **under the controls, limitations and regulations of a special exception.**"*

This provision is clarified by the General Provisions of Subparagraph C, which state:

1. *The Board of Supervisors retains the power to decide upon the issuance of use permits. Such permits **may be authorized** in appropriate zoning districts upon **a finding by the Board of Supervisors that the use will not be detrimental to the character and development of adjacent properties** and will be consistent with the purpose and intent of the provisions of this Ordinance and the Comprehensive Plan.*
2. *The Board of Supervisors shall designate, where appropriate, conditions and restrictions in the granting of use permits to assure the use will be compatible with the neighborhood in which it is to be located and will meet the standards contained herein; or **where that cannot be accomplished, to deny the use as not in accordance with adopted plans and policies or as being incompatible with existing uses or development allowed by right in the area.***
3. *The burden of proof lies with the applicant to demonstrate that the proposed use is consistent with the purpose and intent of the applicable zoning district and satisfies the general standards in Article XVII, Section 13.C and specific conditions contained in Article XVII, Section 13.D.*

Subparagraph D then further clarifies how the General Standards of 13.C are measured by requiring that all use permits shall satisfy the following general standards:

1. The **use shall not adversely affect the character and established pattern of development** of the area in which it wishes to locate.
2. The use **shall be in harmony with the uses permitted by right** under a zoning permit in the zoning districts **and shall not affect adversely the use of neighboring properties.**

3. The location and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and buildings or impair the value thereof.
4. The use shall not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use.
5. The use ***shall not be detrimental to the public health, safety or welfare or injurious to property*** or improvements in the neighborhood.
6. The use shall be in accordance with the purposes of the zoning regulations contained in this Ordinance and the Comprehensive Plan of Caroline County.
7. ***Adequate*** utility, drainage, ***parking***, loading and other necessary facilities to serve the proposed use shall be provided.
8. The use shall be such that air quality, surface and groundwater quality and quantity, are not degraded or depleted to an extent that would hinder or discourage the appropriate development and/or use of adjacent or nearby land and/or buildings or impair the value thereof.
9. The use shall be such that pedestrian and vehicular traffic generated will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood and on roads serving the site.

Finally, Article XVII Section 13.D. The Board of Supervisors may specify conditions in granting use permits as it deems necessary in the public interest to assure compliance with the general and specific standards and that it will continue to do so. Conditions may include, but are not limited to the following:

1. The hours of operations.

What is the mechanism for differentiating between family/church party and paid event?

2. Provisions for adequate parking and ingress and egress to public streets and roads.

Does parking meet the required yard/setback requirements?

3. The protection of surface and groundwater.

Limit use of venue in RPA?

4. Limitations on site lighting including intensity and shielding, so as not to adversely affect adjacent or nearby property owners.

Unlike a retail business, there is no indication light fixtures will be permanent. How is condition 16 enforced, except as a general statement?

5. The provision of adequate sewer and water facilities.

6. Noise abatement measures.

Who going to inspect for recommended condition 4 and how will it be inspected. Amplified music is already a problem from the site.

7. The location, size, height, design of buildings, walls, fences, landscaping and ***buffers***.

8. Underground utilities.

9. Abatement measures for smoke, dust, odor, ***noise*** or other elements.

How will the noise regulations in Chapter 68 be enforced at the County line?

10. Performance bonding to ensure standards are met and plans are implemented.

11. ***Setbacks*** and yard requirements necessary for orderly expansion and to prevent traffic congestion.

Clearly identified setbacks to abutting property lines. Clearly defined/posted venue boundaries to rear of property towards the river?

What about applicant renewals instead of simply reviews, at least for a few years?

The Planning Commission forwarded a recommendation of approval with 20 suggested conditions. While a number of conditions may be good for regular business uses, the nature of the proposed use does not lend itself to the conditions as suggested.

I know the Board understands its ordinance and does not need me to review the regulations line by line. I highlighted the applicable text, simply to reiterate to the Board that granting the Special Exception is a permissive act, with a burden of proof to demonstrate consistency with zoning, and that the application meets the general standards and specific conditions of the ordinance. Absent the ability to make a finding that the use will not be detrimental to adjacent properties, even with conditions, then denial is the appropriate action set forth in Article XVII, Section 13.C.2.

The Board has established an ordered process that, if viewed in the context of the issues raised with the application, neighborhood concerns (noise, liability and traffic), and the inability to meet certain specific conditions, ***the Board can only come to the logical conclusion that it is impossible to craft enforceable conditions that can be monitored and verified, given the non-conforming size (this lot is 50% of the required size of lots in the district) and location of the property.***

Approval of the special exception permit with the conditions as presented will be an enforcement nightmare for the County and the neighbors, blurring the lines between private parties and a fee event. A plain reading of the ordinance dictates that the application be denied, rather than trying to create a rationale to approve the request, "the square peg in a round hole" so to speak!

I thank you for your consideration of my concerns and those of other neighbors in the area.

Sincerely,

Allyson Finchum

